

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 304 of 2000

with

CRIMINAL MISC.APPLICATION No 4148 of 2000

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

- =====
1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

SULTANKHAN YUSUFKHAN PATHAN

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 304 of 2000
MR TS NANAVALI for Petitioner No. 1-3
MR SS PATEL APP for Respondent No. 1
MR LAXMANBHAI A AMAR for Respondent No. 2
 2. Criminal Misc.Application No. 4148 of 2000
MR TS NANAVALI for Petitioner No. 1
MR SS PATEL APP for Respondent No. 1
-

Date of decision: 07/10/2003

ORAL JUDGEMENT

Since these two matters have been arising out of one and the same complaint being Criminal Case No.868/1998 pending before the learned Judicial Magistrate First Class, Ahmedabad (Rural), Mirzapur at Ahmedabad, it would be appropriate to dispose of both these matters by a common judgment.

2. One Anagram Finance Ltd., a Company registered under the Companies Act, 1956 advanced a loan to one Aminaben Gulam Husain Patel for the purchase of a motor vehicle. A Hire Purchase Agreement was entered into between the said Company and Aminaben for the said purpose. There is no serious dispute that Aminaben purchased a motor vehicle out of the said loan and was required to pay the amount of loan by instalments, in accordance with the terms and conditions of the Hire Purchase Agreement. Indisputably, Aminaben did not pay the full amount, in accordance with the terms and conditions of the said Hire Purchase Agreement and in the meantime, she appears to have transferred the said vehicle to Sampurna Singh Ashasingh of Ahmedabad. It seems that neither Aminaben nor the said purchaser paid up the amount of loan. These facts have not been disputed in both these matters.

3. It appears that, thereafter, the said Finance Company took possession of the said vehicle. In the meantime, a civil suit was filed being Civil Suit NO.605/1997 by the said purchaser against the said Company as well as against Aminaben for perpetual injunction preventing the said Company from taking possession of the said vehicle from him. It seems that an interim relief application Ex.6 was also submitted by the said purchaser of the said vehicle in the said suit for interim injunction preventing the said Company from taking possession of the said vehicle from him.

4. After hearing the parties, the learned Judge of City Civil Court, Ahmedabad passed an order on 17/03/98 dismissing the said application Ex.6 of the said purchaser observing that Aminaben had purchased the said truck under a Hire Purchase Agreement bearing NO.12329 dated 02/04/96 which is still in existence and Aminaben is the hirer and the Finance Company is the owner of the said truck. It was also observed in it that under the terms and conditions of the said Hire Purchase Agreement,

Aminaben was not entitled or authorised to transfer the said vehicle without the consent of the Finance Company. In view of the above observation, the learned Judge dismissed the said application and did not grant the said temporary injunction in favour of the said plaintiff who had purchased the said vehicle from hirer - Aminaben.

5. It seems that the said application was dismissed on 17/03/98 and since no Misc.Civil Appeal appears to have been preferred under Order 43 of the Code of Civil Procedure, 1908, the said Finance Company took possession of the said vehicle from the person, being the purchaser from the hirer, who stands as the concerned respondent in both these matters, being Sampurna Singh Asha Singh. Indisputably, the said possession was taken on 21/07/98 at about 1.30 pm.

6. Feeling aggrieved by the said action on the part of the Finance Company, the complainant - Sampurna Singh filed a complaint before the learned Chief Judicial Magistrate, Ahmedabad (Rural) on 24/07/98 complaining against Sultankhan Yusufkhan Pathan, Abukhan Pathan and the Manager of the said Finance Company stating that the said three persons had forcibly taken possession of the said vehicle from the complainant at the point of a gun, and thereby, these three persons committed offences punishable under Secs.384, 387 and 395 read with Section 120-B of the Indian Penal Code alongwith Section 135 of the Bombay Police Act and under Section 25(1) of the Arms Act. The learned Magistrate passed an order on 24th July, 1998 directing inquiry through Vejalpur Police Station under Section 202 of the Code of Criminal Procedure, 1973 (for short "the Code"). After receiving the report from the Police Station, the learned Magistrate passed an order on 31st August, 1998 for taking cognizance of the offences and for issuing summons against the aforesaid three persons for the aforesaid offences punishable under Secs.384, 387, 506(2) read with Section 114 of the Indian Penal Code.

7. Feeling aggrieved by the said order of the trial Court and feeling aggrieved by the institution of the said complaint, the petitioners have filed the aforesaid Criminal Misc.Application under Section 482 of the said Code stating that the Finance Company had all powers under the terms and conditions of the Hire Purchase Agreement to take back possession of the vehicle in question, since neither the contesting respondent nor Aminaben had paid the requisite amount of instalment of loan and that hirer - Aminaben had transferred the vehicle in favour of the contesting respondent, without

the consent of the Finance Company in violation of the terms and conditions of the Hire Purchase Agreement. That, therefore, when the possession was lawfully taken in accordance with the terms and conditions of the agreement, no offence is made out, and therefore, the complaint be quashed. On the other hand, so far as the Criminal Revision Application is concerned, the said petitioners submitted an application before the concerned Court for their discharge under Section 245(2) of the said Code. After hearing, the trial Court found that when the process has already been issued, the accused persons should not be discharged without recording evidence, and therefore, the Court dismissed the said application of the petitioners for their discharge from Criminal Case no.868/1998.

8. Feeling aggrieved by the said order of the trial Court, the petitioners have preferred this Revision Application under Section 397 of the said Code stating that the trial Court has not properly appreciated the legal position and that when no offence was made out, the trial Court ought to have considered the said aspect of the case and ought to have discharged the petitioners from the said complaint.

9. On receipt of the two matters by this Court, it is found that Rule was issued in Criminal Misc. Application no.4148/2000 and in response to service of notice of Rule, Mr.S.S.Patel learned A.P.P has appeared on behalf of the State whereas Mr.Laxmanbhai Amar learned Advocate has appeared on behalf of respondent no.2 - the original complainant. So far, Criminal Revision Application is concerned, there also, Rule was issued and in response to the service of notice of Rule, Mr.S.S. Patel appeared on behalf of the State whereas Mr.Laxmanbhai Amar appeared on behalf of respondent no.2.- the original complainant. Both the matters were placed at the stage of final hearing and learned advocates for both the sides have advanced their arguments at a very great length, taking me through the proceedings before the Civil Court, the Hire Purchase Agreement, the contents of the complaint and the order of the trial court dismissing the application for the discharge of the present petitioners.

10. Now, so far as the Hire Purchase Agreement is concerned, it is also produced on record and even the contesting respondent is not unaware about the contents thereof, as he was a party before the Civil Court as a plaintiff. It has been contended that the said agreement was produced even before the Civil Court by the Finance

Company. Learned advocate for the petitioners in both the petitions has argued at length that in accordance with the terms and conditions of the Hire Purchase Agreement, the contesting respondent in both the matters could not have purchased the said vehicle from Aminaben as Aminaben was prohibited from disposing the said vehicle without the consent of the Finance Company. It is more so when Aminaben was a defaulter inasmuch as she had not paid a sizable amount of loan to the Finance Company in accordance with the agreement contained in the Hire Purchase Agreement. The learned advocates for both sides have therefore, taken me through the relevant conditions of the said agreement.

11. At the same time, learned advocate for the contesting respondent has argued that the Hire Purchase Agreement would be governed by the provisions made in the Hire Purchase Agreement Act, 1972 and therefore, the agreement should be read in light of the background of the provisions made in the said Act of 1972. The learned advocate for the petitioners has argued at length that the said Act is not in force. In support of the said contention, he has relied upon a decision of the Hon'ble the Apex Court in the case of Charanjit Singh Chadha and Others V/s. Sudhir Mehra reported in (2001) 7 SCC 417. The relevant portion is at paragraph 6, page 421, which may be reproduced for ready reference as follows;

"6. Though in India, Parliament has passed the Hire Purchase Act, 1972, the same has not been notified in the Official Gazette by the Central Government so far. An initial notification was issued and the same was withdrawn later. The rules relating to hire-purchase agreements are delineated by the decisions of higher courts. There are a series of decisions of this Court explaining the nature of the hire-purchase agreement and mostly these decisions were rendered when the question arose whether there was a sale so as to attract payment of tax under the Sales Tax Act."

12. According to the above observation, it is clear that the Hire Purchase Agreement Act, 1972 was initially brought into force under a notification by the Central Government. But, it appears that the said notification was subsequently withdrawn as observed in paragraph 6 of the said judgment. The learned advocate for the contesting respondent has argued that the Central Government had no authority to withdraw the said notification. However, this is not an issue before me

and the power to withdraw the said notification has not been challenged, and therefore, it would not be open at this stage to decide the issue either way. The fact remains that the Hon'ble the Supreme Court has observed in unequivocal terms that the said notification has been withdrawn. The Hon'ble the Supreme Court has also expressed opinion that the rules relating to Hire Purchase Agreement are delineated by the decisions of the High Courts and that there are series of decisions of the Supreme Court explaining the nature of the Hire Purchase Agreement and mostly, these decisions were rendered when the question arose whether there was a sale so as to attract payment of tax under the Sales-tax Act.

13. At the above stage of dictation, the learned advocate for the contesting respondent requested for some time, in order to enable the contesting respondent to take appropriate steps for challenging the aforesaid action of the Central Government withdrawing the earlier notification under which the Hire Purchase Agreement Act, 1972 was brought into force. It is not much in dispute that the Hire Purchase Agreement was brought into force by the notification of the Central Government and by a subsequent notification referred to hereinabove. The said notification was withdrawn and therefore, the said Act has ceased to be operative. Time was granted and it is not much in dispute that an appropriate petition was submitted before this Court and it has been stated at the bar that the said petition has been dismissed by the Division Bench of this Court. Therefore, the said contest of the contesting respondent does not survive. In that view of the matter, the aforesaid observation of the Hon'ble the Supreme Court will squarely apply to the facts of the case on hand. Therefore, it would not be necessary to look into the provisions of the said Act and the provisions made in the Contract Act, in the background of the terms and conditions of the Hire Purchase Agreement between the petitioner and the contesting respondent, will have to be considered.

14. Now, if we refer to the said Agreement between the parties, then the following Clauses would be relevant;

2.2.2 : LESSEE irrevocably stipulates that at no time during the period of this LEASE AGREEMENT of which LEASE period is noncancellable, will the LESSEE attempt or cause to capitalise the LEASED asset on LESSEE's balance sheet and the LESSEE and the LESSOR irrevocably agree that ownership of the EQUIPMENT during the tenure of the LEASE

as specified herein and inclusive of any renewal options that the parties hereto may concur to, indisputably vests with the LESSOR.

4.5.1 : No right, title or interest in the equipment shall pass to the LESSEE by virtue of these presents conditioned upon the LESSEE's compliance with and fulfillment of the terms and conditions of this Agreement. The LESSEE shall have the right to have and retain possession and use the EQUIPMENT for the full term of LEASE. LESSOR may require plates or markings to be affixed to or placed on the EQUIPMENT, indicating LESSOR's title thereto and the interests of its bankers, if any. The LESSOR and the LESSEE hereby confirm that their intent is that the EQUIPMENT shall at all times remain the property of the LESSOR. LESSEE also agrees and undertakes not to sell, assign, sublet, pledge, hypothecate, or otherwise encumber or suffer a lien upon or commit or omit to do any action against any interest of this agreement or the equipment or create any interest to the right, title interest of the LESSOR or to remove the EQUIPMENT from the factory or office site where it was originally put, to sue or sub-lease or allow any third person to use the EQUIPMENT without the prior consent of the LESSOR in writing. In the event of any breach of this sub-clause by the LESSEE the LESSOR shall be entitled (but shall not be bound) to pay to any third party such sum as is necessary to procure the release of the EQUIPMENT from any charge, encumbrance or lien and shall be entitled to recover such sum from the LESSEE forthwith.

7.2 : Demand that the LESSEE shall return all the Equipment to the LESSOR at its own risk and expenses in the same condition as delivered, ordinary wear and tear accepted, at such location as the LESSOR may designate and upon failure of the LESSEE to do so within 7 days from the date of demand, enter upon premises where such EQUIPMENT is located and take immediate possession of and remove the same, all without liability to the LESSOR or its Agents for such entry or for damage to property otherwise, LESSOR may detach and dismantle the EQUIPMENT from any part of the freehold or process the EQUIPMENT to which it may be affixed without the written permission of the LESSEE.

15. It appears from the aforesaid Agreement that on each and every page of the said Agreement (Xerox Copy of which has been submitted) the signature of the borrower appears, which prima facie shows the genuineness of the said Agreement.

16. It is clear that in accordance with the terms and conditions of the Agreement, it is always open to the Finance Company to take possession of the property in question, vehicle in the present case, if the instalments have not been paid in accordance with the terms and conditions of the contract. In the present case, we find that the petitioner has clearly alleged that the respondent has not complied with the requirement of the terms and conditions of the contract. It is required to be seen that the contesting respondent himself is not the hirer, but, he appears to be the purchaser from the hirer. So, on the one hand, the hirer has not complied with the requirement of the terms and conditions of the contract and on the other hand, even the purchaser from the hirer has also not complied with the terms and conditions of the contract, meaning thereby, that the hirer as well as the purchaser from the hirer, both have committed violation of the terms and conditions of the Hire Purchase Agreement and therefore, according to the case of the petitioner, the petitioner was entitled, under the terms and conditions of the contract, to take back possession of the vehicle in question. It is required to be seen that under the terms and conditions of the contract in question, the hirer was holding the property in question for and on behalf of the Finance Company. Therefore, the possession by the borrower was on behalf of the Finance Company. In that case, the present respondent being the purchaser from the said hirer cannot get a title better than the title possessed by the borrower.

17. The account has been produced on record and it shows that the hirer had made defaults in making payment of instalments. It is very clear that even a single default would authorise the Finance Company to take back possession of the vehicle in question. Here, the defaults are more than one, and therefore, the petitioner was entitled to get back possession of the vehicle in question, in accordance with the terms and conditions of the contract.

18. An allegation has been made that the petitioner has forcibly taken possession of the vehicle in question and therefore, a F.I.R. to that effect has been filed.

The petitioner has negated the said contention.

19. For appreciation of the Agreement of Hire Purchase, it would be worthwhile to refer to a decision in the case of Sardar Trilok Singh and Ors. V/s. Satya Deo Tripathi reported in (1979) 4 SCC 396. There also there was a Hire Purchase Agreement between the parties. The complainant had alleged that the accused, in a high handed manner, during his absence, came to the house and forcibly removed the truck and thereby committed the offence of dacoity. The police investigated the case and filed a final report. The accused filed his objection before the Magistrate, but the objection was not considered. The accused filed revision before the Sessions Court which was dismissed. Thereafter, the accused filed a petition u/s.482 of the said Code. It was summarily dismissed by the High Court and the matter reached upto the Hon'ble the Supreme Court, at the instance of the accused. In para 5 of the judgment the Hon'ble the Supreme Court has made following observation;

Para 5 : "We are clearly of the view that it was not a case where any processes ought to have been directed to be issued against any of the accused. On the well-settled principles of law it was a very suitable case where the criminal proceeding ought to have been quashed by the High Court in exercise of its inherent power. The dispute raised by the respondent was purely of a civil nature even assuming the facts stated by him to be substantially correct. Money must have been advanced to him and his partner by the financier on the basis of some terms settled between the parties. Even assuming that the agreement entered on 29th March, 1973 was duly filled up and the signature of the complainant was obtained on a blank form, it is to be noticed that the amount of the two monthly installments admittedly paid by him was to the tune of Rs.3,566 exactly @ Rs.1,783 per month. The complaint does not say as to when these two monthly installments were paid. In the First Information Report which he had lodged he had not stated that the third monthly instalment was payable on July 31, 1973. Rather, from the statement in the First Information Report it appears that the instalment had already become due on 28/07/73, when the complainant went out of Kanpur according to his case. The question as to what were the terms of the settlement and whether they were duly incorporated in the printed agreement or not were

all questions which could be properly and adequately decided in a civil court. Obtaining signature of a person on blank sheet of paper by itself is not an offence of forgery or the like. It becomes an offence when the paper is fabricated into a document of the kind which attracts the relevant provisions of the Penal Code making it an offence or when such a document is used as a genuine document. Even assuming that the appellants either by themselves or in the company of some others went and seized the truck on 30/07/73 from the house of the respondent they could and did claim to have done so in exercise of their bona fide right of seizing the truck on the respondent's failure to pay the third monthly instalment in time. It was, therefore, a bona fide civil dispute which led to the seizure of the truck. On the face of the complaint petition itself the highly exaggerated version given by the respondent that the appellants went to his house with a mob armed with deadly weapons and committed the offence of dacoity in taking away the truck was so very unnatural and untrustworthy that it could not take the matter, out of the realm of civil dispute. Nobody on the side of the respondent was hurt. Even a scratch was not given to anybody".

19.1 In the present case also, we find that neither the hirer nor the purchaser from the hirer has taken pain or has made effort to see that instalments are regularly paid. When the instalments are not paid, then, neither the hirer nor the purchaser would be at liberty to keep the said vehicle with them.

19.2 Even as on today, the contesting respondent or the original hirer has not agreed to make payment of instalments or arrears of instalments and therefore, the petitioners are well within their right to take back possession of the vehicle in question.

19.3 Once it is found that the petitioners were well within their right to take back possession of the vehicle in question, on account of the violation committed by the contesting respondent in making payment of instalments in accordance with the terms and conditions of the contract, then in that case, the entire case of

the so-called offences punishable u/s.384, 387, 395, 120-B IPC and 135 of the Bombay Police Act and 25 of the Arms Act, would be an action to abuse the process of law and process of Court. It, therefore, cannot be said that there was an act of extortion or robbery committed by the petitioners in respect of the said vehicle. It seems that the trial court has not considered this aspect of the case, while issuing process for the aforesaid offences against the petitioners and by directing registration of complaint against the petitioners.

19.4 The result is that, under the terms and conditions of the contract, the petitioners were at liberty to take back possession of the vehicle in question. If the petitioners have taken back possession of the vehicle, in accordance with the terms and conditions of the contract, then in that event, no offence can be said to have been committed by the petitioners.

20. An attempt was made to show in order to argue that the Courts are not supposed to blindly follow the decisions which are shown to them. There is no difficulty in accepting the above principle, since the Courts have to look at the facts of each case separately and have to consider as to whether a particular principle will apply to the facts of the case on hand. In the present case, we find that substantially there is a dispute about the implementation of the terms and conditions of the Hire Purchase Agreement. The principle relating to Hire Purchase Agreement would apply to the facts of the case on hand, if the terms and conditions of the Hire Purchase Agreement are similar in both the cases.

21. In the case of Escorts JCB Ltd. V/s. Commissioner of Central Excise, Delhi-II reported in 2003(1) SCC 281 it has been observed that there is no precedent for dangers and it is a legal proposition flowing from the judgment, which has a binding effect. When the facts are similar or identical or where the terms and conditions of a contract are similar and identical, then the principle enunciated in one case, may squarely apply to a similarly situated other case. There cannot be any dispute about the same. Here, we find that the terms and conditions are identical and therefore, the principle enunciated in the earlier case referred to hereinabove, will squarely apply to the facts of the case on hand also.

22. In the case of Manager, Panjarapole, Deodar V/s. Chakaram Morajinat reported in 1997(2) GLR 1321 it has been laid down that Article 141 of the Constitution of India will not be attracted, if law is not declared or is stated vocally and a mere conclusion by the Hon'ble the Supreme Court cannot be said to be law declared by the Supreme Court.

22.1 In the present case, we find that the Hon'ble the Supreme Court has referred the terms and conditions of Hire Purchase Agreement and thereafter, it has been laid down that the Finance Company has every right to take back possession of the property in question, in case the other side has committed violation of the terms and conditions of the contract. The same facts are emerging in the case on hand also. The terms and conditions of the contract are identical. The defaults are also identical. Therefore, the earlier decision will squarely apply to the facts of the case on hand.

23. In the case of State of Punjab V/s. Surinder Kumar reported in 1992 SC 1593 it has been laid down that when there is an order of the Supreme Court, granting certain relief in exercise of powers under Article 142 of the Constitution of India, then, similar order cannot be issued by the High Court.

23.1 Now, the above judgment has not been pronounced on a sole consideration of Article 142 of the Constitution of India and therefore, it cannot be said that this Court cannot pass similar order in exercise of the powers u/s.397 or 482 of the said Code.

24. In the case of Dharampal V/s.Smt.Ramshri reported in AIR 1993 SC 1361 it has been laid down that when criminal revision application has been dismissed by the Sessions Court, then, second revision application against the said dismissal before the High Court is not maintainable, in view of S.397(3) of the said Code. Therefore, the power of second revision u/s.397 of the said Code cannot be exercised, by treating a revision application as a criminal misc.application u/s.482 of the Code.

24.1 This being not a matter arising as a second revision, the above decision cannot be applied to the facts of the case on hand.

25. In the case of Smt.Nagawwa V/s. Veeranna Shivalingappa Konjalgi reported in AIR 1976 SC 1947 the Hon'ble the Supreme Court has given illustrations of cases in which a process against the accused can be quashed or set aside. They can be enumerated as follows;

- (1) Where the allegations made in the complaint or the statement of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused.
- (2) Where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused;
- (3) Where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and
- (4) Where the complaint suffers from fundamental legal defects, such as want of sanction, or absence of a complaint by legally competent authority and the like.

26. In the case of P.G.I. of M.E. and Research, Chandigarh V/s. Raj Kumar reported in AIR 2001 SC 479 it has been observed that under Article 141 of the Constitution of India, a decision of the Hon'ble the Supreme Court rendered in peculiar facts and circumstances of the case on hand, cannot be treated to be a precedent in a subsequent case, which is based on its own facts. In other words, when the facts are different the principle cannot operate as precedent.

26.1 In the present case, we find that the terms and conditions of the Hire Purchase Agreement are identical and therefore, the principle enunciated in the earlier Supreme Court decisions has to be treated as a precedent and a binding precedent to this Court also.

27. It is, therefore, clear that in a Hire Purchase Agreement the parties voluntarily agree that in case of a

single default, the Finance Company will be at liberty to take back possession of the vehicle in question. The original borrower has committed default in making payment of instalments in accordance with the agreement and therefore, the Finance Company i.e. the petitioners herein, were entitled to take back possession of the vehicle in question. It is not relevant as to whether the vehicle was in actual possession of the borrower or was subsequently transferred and possessed by the contesting respondent. The petitioners, being a Finance Company, were at liberty to chase and follow the vehicle. In other words, even if the borrower had transferred the possession of the vehicle, the petitioners were not without any remedy and it was open to them to take possession of the vehicle, even from the contesting respondent. Therefore, to take possession of the vehicle in accordance with the contract, cannot be treated to be an offence of theft, extortion or robbery.

28. In that view of the matter, it has to be accepted that on a bare reading of the complaint and having regard to the aforesaid background of Hire Purchase Agreement, it cannot be said that the petitioners have committed the offences of robbery, extortion or theft. In that view of the matter, when no offence is made out, it would be futile to permit the parties to go with the trial. In other words, the institution of complaint by the contesting respondent against the petitioners has to be treated to be an abuse of the power of Court and abuse of process of law and when abuse of process of law and abuse of power of the Court are apparent on record, then it becomes the duty of this Court to interfere with such proceedings. It is not much in dispute that before going to the Criminal Court with the aforesaid criminal case, a civil suit was filed against the petitioners, being Civil Suit No.605/1997 before the City Civil Court at Ahmedabad. There, interim relief was also sought against the petitioners. The said prayer was dismissed by the said Court on 17/03/98. The impugned complaint was filed by the contesting respondent after the dismissal of the said application for interim relief. This shows that after failing in getting interim relief before the Civil Court, the contesting respondent preferred this complaint. This shows that there was some sort of absence of bonafide on the part of the contesting respondent in going to the Criminal Court after failing before the Civil Court. In that view of the matter, these petitions are required to be allowed.

29. For the foregoing reasons, these two matters are allowed as follows;

(a) So far Criminal Misc.Application

No.4148/2000 is concerned, it is allowed and the proceedings of Criminal Case No.868/1998 pending before the learned Judicial Magistrate, First Class, Ahmedabad (Rural) now functioning at Old High Court Building, are quashed and set aside and the trial court will naturally not proceed ahead with the said Criminal Case.

(b) So far Criminal Revision Application

No.304/2000 is concerned, it is also allowed and the order dated 29/05/2000 passed below Ex.20 in Criminal Case No.868/1998 by the learned Judicial Magistrate, First Class, Ahmedabad (Rural) now functioning at Old High Court Building, dismissing the application of the petitioners for their discharge from the said criminal case is set aside, and the petitioners herein are ordered to be discharged from the said criminal case. The trial court will naturally not proceed ahead against the petitioners in the said criminal case.

Rule is made absolute accordingly in both the matters.

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(D. P. Buch, J.)

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